

REMARKS

This paper is filed in response to an Office action dated February 28, 2008. In the Office action, all pending claims 1-20 are rejected over prior art. More specifically, claims 1-3 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,416,522 (“Strecker”); claims 4-9 are rejected as being obvious over Strecker in view of U.S. Patent Application No. 2004/0172046 (“Hlavka”); claims 10-15 are rejected as obvious over Strecker in view of International Publication No. WO 02/17797 (“Miller”); claim 16 is rejected as being obvious over Strecker in view of U.S. Patent No. 5,683,451 (“Lenker”); and claims 17-20 are rejected as being obvious over Strecker in view of Lenker and further in view of U.S. Patent Application No. 2004/0193191 (“Starksen”).

In response, applicants have canceled claim 4 and amended independent claims 1, 5, 10 and 16 to include additional claim limitations and to further distinguish the subject matter specified therein from the prior art cited by the Examiner. In particular, independent claim 1 is amended to further require a fixation component having first and second fixation members connected by a tether, and a disconnectable connection between the fixation component and a pusher. Similarly, independent claim 10 is amended to specify first and second fixation members connected by a tether, and a tab sized to frictionally engage a slot to provide a disconnectable connection between a fixation component and a pusher. Furthermore, independent claim 16 is amended to specify delivery members, each defining a delivery channel having a longitudinal slot extending the length of the delivery channel. Support for the amendment to claims 1 and 10 is found at page 2, paragraphs [0027]-[0028] as well as Figs. 4A and 4B of the specification. Support for the amendment to claim 16 is found at page 3, paragraph [0041] and Fig. 9A of the specification. No new matter is added. In view of the amendments and remarks presented herein, reconsideration and allowance of all pending claims are respectfully requested.

Applicants first submit that the obviousness rejection of independent claim 1, as well as claims 2, 3 and 5-9 dependent thereon, is overcome by way of this amendment because the prior art suggested by the Examiner, namely Strecker, fails to teach or suggest each and every element of independent claim 1. More specifically, Strecker fails to disclose a fixation component with first and second fixation members connected by a tether, a slot formed at the proximal end of the

fixation component, or a pusher formed with a tab, much less a tab sized to frictionally engage the slot and to provide a disconnectable connection between the fixation component and the pusher. The Office action asserts that the probe 103 and the rear segment 107 of securing means 105, as shown in Fig. 15 of Strecker, discloses the claimed tab and slot arrangement. However, the rear segment 107 is clearly not a slot and the probe 103 is clearly not a tab. Moreover, the probe 103 does not frictionally engage or disconnectably connect to securing means 105 in any way. In other words, turning the probe 103 of Strecker will not turn securing means 105, and axially retracting the probe 103 of Strecker will not retract the axial position of securing means 105. The Examiner further asserts that tab and slot configurations are well known in drivers, the most common being a screw driver. However, the present application is not related to a driver, much less a screw driver. The present application provides a pusher with a tab detachably *connected* to the slot of a fixation component. A screw driver is in no way detachably or disconnectably *connected* to a screw. Furthermore, drivers such as the suggested screw drivers are unsuitable for use in the presently claimed device because they are not sufficiently flexible to traverse the delivery members in the deployment position, and therefore one of ordinary skill in the art would be discouraged from using same in the manner suggested by the Examiner.

As the prior art fails to disclose fixation members connected by a tether, a fixation component with a slot, or a pusher with a tab sized to frictionally engage and disconnectably connect with the slot, it follows that claim 1 is rendered nonobvious. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection. Additionally, because claim 1 is not rendered obvious by Strecker, claims 2, 3 and 5-9 dependent thereon are similarly not obvious over the prior art.

Applicants also submit that the obviousness rejection of independent claim 10, as well as claims 11-15 dependent thereon, is overcome because the combination of Strecker and Miller fails to teach or suggest each and every element of independent claim 10, as currently amended. Specifically, claim 10 now requires a fixation component with a slot at a proximal end and fixation members connected by a tether. Claim 10 also recites a pusher with a tab at a distal end sized to frictionally engage the slot and to provide a disconnectable connection between the fixation component and the pusher. Strecker has been discussed above as failing to disclose the fixation component and pusher arrangement as now claimed. The Office action also

acknowledges that Strecker fails to disclose an inner sheath. Miller fails to supply all of the deficiencies of Strecker. More specifically, Miller fails to disclose a fixation component with a proximal end formed with a slot and a pusher with distal end with a tab, let alone a tab sized to frictionally engage the slot and to provide a disconnectable connection between the fixation component and the pusher. Miller also fails to disclose first and second fixation members connected by a tether.

As the combination of Strecker and Miller fails to disclose each and every element of independent claim 10, as well as claims 11-15 dependent thereon, the obviousness rejection should also fail. Applicants respectfully request reconsideration and withdrawal of the purported rejection.

Applicants further submit that the obviousness rejection of independent claim 16, as well as claims 17-20 dependent thereon, is overcome by way of this amendment because the combination of Strecker and Lenker fails to teach or suggest each and every element of independent claim 16. As currently amended, claim 16 now requires each delivery member to define a delivery channel having a longitudinal slot that extends a length of the delivery channel to a distal end of the delivery member. As the Office action acknowledges, Strecker fails to disclose or suggest a delivery channel having a slot at the distal end of the delivery member, much less a longitudinal slot extending a length of the delivery channel. However, Lenker fails to supply the deficiencies of Strecker. Lenker discloses a cover having a series of short splits disposed at a distal end thereof. Lenker does not disclose a longitudinal slot communicating with an exterior of the delivery member and extending the length of the delivery channel to the distal end of the delivery member.

As the combination of Strecker and Lenker does not disclose a delivery member defining a delivery channel having a longitudinal slot communicating with an exterior of the delivery member and extending a length of the delivery channel to its distal end, claim 16 is not rendered obvious. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection. Furthermore, because claim 16 is not obvious over the prior art, claims 17-20 dependent thereon are similarly not obvious over the prior art.

CONCLUSION

In view of the foregoing, applicants respectfully submit that each of the pending claims 1-3 and 5-20 is in condition for allowance and respectfully solicit same. If a telephone call would expedite prosecution of the subject application, the Examiner is invited to call the undersigned agent at the number listed below.

Dated: May 23, 2008

Respectfully submitted,

By 
Robin S. O

Registration No.: 60,043
MILLER, MATTHIAS & HULL
One North Franklin Street
Suite 2350
Chicago, Illinois 60606
(312) 235-4763
Agent for Applicant